

10164–10170 FORMAL SETTLEMENT STIPULATIONS**10164 Nature of Formal Settlement Stipulations****10164.1 Generally**

A formal settlement is a written stipulation providing that, on approval by the Board, a Board order in conformity with its terms will issue. Ordinarily, it will also provide for the consent entry of a court judgment enforcing the order. Sec. 101.9(b)(1), Statements of Procedure.

10164.2 Parties

Normally, respondent, the charging party and the General Counsel are parties to the formal settlement stipulation. However, the Regional Office can accept an appropriate unilateral formal settlement, subject to approval by the General Counsel and the Board. The Regional Office should also include in the formal settlement stipulation all parties necessary to such agreement. Secs. 10134.3 and 10264.3–.4.

10164.3 Overview

A formal settlement stipulation requires issuance of a complaint. If a complaint has not issued, one must issue in conjunction with the settlement. A formal settlement may be appropriate in certain circumstances, such as where there is:

- A history of prior unfair labor practices
- A likelihood of recurrence or extension of the instant unfair labor practices
- Continuing violence or a likelihood of recurring violence or
- A backpay installment schedule covering an extended period of time

The settlement should include a waiver of notice of hearing as well as a waiver of the hearing itself.

When it appears that respondent's purpose in refusing to execute a formal settlement stipulation is its belief that a Board Order can be avoided by complying with the Administrative Law Judge's decision that will issue after hearing, respondent should be apprised that, under the Act, Sec. 102.48, Rules and Regulations and Sec. 101.11, Statements of Procedure, a Board Order will issue even though respondent does not file exceptions to the ALJ's decision and agrees to comply with the ALJ's recommended Order.

In the absence of unusual circumstances, a respondent who executes a formal settlement should not be permitted to withdraw from the stipulation after approval by the Regional Director or the General Counsel, as appropriate. *George Banta Co.*, 236 NLRB

1559 (1978). In the event that respondent attempts to withdraw from the settlement while it awaits approval by the Board, the Regional Office should immediately submit the matter, with its recommendation, to the Division of Advice. GC Memo 00-03.

10164.4 Basic Record

The formal settlement provides a stipulation as a substitute for a hearing. The basic record available to the Board and the court consists of the charge, the complaint, and the stipulation. If the charge does not conform to the complaint on which the stipulation is based, an amended charge should be secured if possible. The answer, if filed, should normally be withdrawn, but may be incorporated into the record if respondent insists.

10164.5 Court Judgment Preferred

A formal settlement providing for a court judgment is preferred, since judgments serve as more effective deterrents to future violations of the Act. If respondent consents to the entry of a court judgment, it is possible to include a nonadmission clause in the stipulation. If respondent will not execute a stipulation providing for the entry of a court judgment, a request for a nonadmission clause must be rejected, since such a clause could create a question regarding the enforceability of the stipulation. Moreover, in the absence of consent to a court judgment, respondent must admit the allegations of the complaint.

Where a formal settlement provides for a court judgment, entry of such a judgment will be sought. The Board agent negotiating the formal settlement should take affirmative measures to make it clear that the stipulation contemplates the entry of a Board order and court judgment, even though the Board order may have been complied with in the interim.

Even if a formal settlement does not provide for a court judgment, entry of such a judgment may be sought in appropriate circumstances.

10164.6 Backpay Provisions

In a formal settlement the exact amount of backpay agreed upon should be set forth rather than be left for future computation. The amount should be specified in the stipulation and may be included in the notice. In order to guard against further loss of earnings that may be incurred because of a delay in compliance, a provision that respondent will make whole the discriminatees for any additional loss of earnings, plus interest caused by a failure to offer timely reinstatement consistent with the terms of the settlement, should be included. Where such a provision is used, the stipulated order should provide also that all payroll and other records necessary to a determination of backpay due will be made available to the Regional Office. If the settlement provides for installment payments, the payment schedule should be incorporated into the settlement. Under such circumstances or if respondent's financial condition is doubtful, the Regional Office may require a security agreement as part of the settlement.

10164.7 Obtaining Approval of Formal Settlement Stipulation

Before transmittal to the parties, a formal settlement should be reviewed for conformance to Regional Office policy.

(a) *Formal Settlement Stipulation Before Hearing Opens:* When entering into a formal settlement stipulation before hearing opens:

1. The Board agent should make clear that the settlement is subject to approval by the Regional Director or the General Counsel, depending upon the circumstances, and ultimately by the Board.
2. Regional Directors have been delegated the authority to approve bilateral formal settlements on behalf of the General Counsel. They should submit such settlements directly to the Executive Secretary for approval by the Board. GC Memo 94-10.
3. Unilateral settlements must be submitted to the Division of Advice for approval by the General Counsel before they are submitted to the Board. GC Memo 00-03. The procedures for a charging party to object to the approval of a formal settlement are set forth in Secs. 101.9(c)(1) and (2), Statements of Procedure.

(b) *Formal Settlement Stipulation After Hearing Opens:* When entering into a formal settlement agreement after hearing opens:

1. Whether the settlement is all-party or unilateral, whether the hearing is in progress and evidence introduced or has been adjourned or closed and before decision, a formal settlement stipulation must be submitted to the Administrative Law Judge for approval pursuant to Sec. 101.9(d)(1), Statements of Procedure. If the ALJ approves the settlement while the hearing is in progress, the hearing should be adjourned indefinitely pending the Board's action on the stipulation. If formal settlement is reached after the hearing has been adjourned or closed, but before issuance of a decision, the agreement should be submitted to the ALJ for approval. The ALJ may issue an appropriate order and notify the parties.
2. On approval by the ALJ, the Regional Office should assume the responsibility for transmission of the formal settlement and the required number of documents constituting the formal record to the Board for final approval. Sec. 10172.5.
3. When an ALJ refuses to approve a settlement agreement, or approves a unilateral settlement, counsel for the General Counsel or any other aggrieved party may ask for leave to appeal to the Board, as set forth in

Sec. 101.9(d)(2), Statements of Procedure and Sec. 102.26, Rules and Regulations.

10164.8 Transmittal Memorandum

The Region should prepare a transmittal memorandum to assist in the review of the formal settlement agreement. The transmittal memorandum should explain the details of the agreement, emphasizing any unusual facts or deviations from standard provisions. In particular, the memorandum should specify the alleged violations the proposed order intends to remedy.

The transmittal memorandum should address the following issues:

- The extent of the remedy regarding backpay, reinstatement/instatement, and notice posting. If the settlement agreement does not provide for a complete remedy, the memorandum should explain the circumstances. For example, the memorandum should note if discriminatees have waived reinstatement and have agreed to a reduction in backpay.
- If backpay is paid through installments based upon a respondent's financial condition, the circumstances of such condition should be explained. In addition, the memorandum should reference any provisions and security arrangements regarding future payments.
- Any unusual remedies.
- Any deviation from normal time limits for compliance.
- Any notice provisions which do not mirror the proposed order or do not conform to provisions normally ordered by the Board.
- If applicable, explain the lack of a provision for entry of a court judgment.
- If applicable, explain the necessity for a broad cease-and-desist order.
- If applicable, set forth the provisions of the settlement agreement that respondent has already complied with.
- In a unilateral settlement, discuss any objections that have been raised.

In a bilateral formal settlement, the original and four copies of the transmittal memorandum, the executed stipulation and the documents constituting the record in the case should be submitted to the Office of the Executive Secretary. In a unilateral formal settlement, the same number of copies should be submitted to the Division of Advice.

The correct address for each party, as well as the facsimile number and E-mail address, should be included in the submission. The document(s) comprising the formal settlement must contain at least one original signature for each necessary party. In addition, the formal settlement should be transmitted electronically to the Executive Secretary or Advice, as appropriate.

10164.9 Nonapproval by Board

If the formal settlement is not approved by the Board, the case will resume its status as before the execution. In this connection, the Regional Office may wish to attempt to renegotiate the terms of the stipulation and resubmit it to the Board. If this is not possible, the case should be scheduled for hearing.

10166 Content of a Formal Settlement Stipulation**10166.1 Disposition of Allegations**

A formal settlement provides for the disposition of all allegations of the complaint. Therefore, the complaint and settlement should conform. Thus, all allegations not covered by the formal settlement must be disposed of by amendment, withdrawal, or dismissal of those portions of the complaint. Such actions should be included in the stipulated record. Alternatively, the formal settlement itself may provide for withdrawal of appropriate allegations from the complaint. In consolidated cases, the settlement may provide for severance of cases, if the circumstances so require.

10166.2 Facts

Under Section 10(c), a Board order must be based on the preponderance of the testimony. Therefore, either in the pleadings or the formal settlement stipulation, the facts of the unfair labor practice involved must be clearly set forth. Allegations in the complaint, either undenied or expressly admitted, may satisfy this requirement; otherwise, the facts must expressly be set forth in the stipulation itself. Where there is some question as to the clarity of the material facts as they appear in the pleadings, all doubts should be resolved in favor of insisting that they be inserted in the formal settlement stipulation. If the stipulation does not provide for the entry of a court judgment, particular care should be taken to set forth all relevant facts to ensure enforcement.

Certain facts critical to establishing the propriety of the Board's order and subsequent court enforcement should be set forth in a formal settlement stipulation, whether or not they are contained in the pleadings. Examples of such necessary facts which should be contained in the stipulation are set forth in Secs. 10166.3–10166.8

10166.3 Overall Content of Formal Settlement Stipulation

(a) *Caption/Parties/Signatures*: The stipulation caption should include the correct full name of all:

- Respondents, including the names of all partners and sole proprietorships, where appropriate
- Charging Parties
- Intervenors
- Parties in Interest

If the case involves the disestablishment, withdrawal of recognition from, or voiding of all or any part of an agreement with a labor organization, that organization should be a party to the stipulation or it should file a waiver of any right to participate or an affidavit certifying that it is dissolved and does not claim to represent the employees concerned. Such waiver or affidavit should be made part of record. Secs. 10134.3 and 10166.3(c).

The stipulation signature lines should name the correct entities.

(b) *General Recitals*: The stipulation should contain a recital of:

- The essential commerce facts necessary to establish Board jurisdiction. Sec. 10168, Pattern 60 at II. An admission that the Board has jurisdiction is not enough.
- A waiver of formal hearing and further proceedings. Sec. 10168, Pattern 60 at IV (3).
- An enumeration of the documents and pleadings that constitute the entire record. Secs. 10166.3(c) and 10168, Pattern 60 at IV (5).
- The procedural facts including filing of charges; issuance of complaints and notices of hearing; orders of severance, dismissal and withdrawal; and service on parties. Secs. 10166.3(c) and 10168, Pattern 60 at IV (1), (2) and (5).
- A statement that the union is a labor organization within the meaning of Section 2(5) of the Act. Sec. 10168, Pattern 60 at III.
- Other essential facts not apparent from the pleadings, but necessary to establish the unfair labor practices. Sec. 10166.2.
- An express consent to entry of a Board order in conformity with the stipulation without further notice. Secs. 10166.7 and 10168, Pattern 60 at VI, and, where appropriate, consent to entry of a court judgment and waiver of all defenses to entry and notice of filing of the application for enforcement. Secs. 10166.8 and 10168, Pattern 60 at VII. Entry of a court judgment is preferred, and makes unnecessary an admission that the respondent committed unfair labor practices and a recitation of facts establishing the unfair labor practices. Secs. 10164.5 and 10166.8.
- Unless court enforcement is provided for, an admission that respondent committed the unfair labor practices alleged in the complaint. Secs. 10164.5 and 10168, Pattern 60 at IV (4).
- A statement that the entire agreement between the parties is contained in the stipulation. Sec. 10168, Pattern 60 at IV (6).
- A statement that the settlement is subject to and effective upon the approval of the Board. Sec. 10168, Pattern 60 at IV (8).

(c) *Documents Constituting the Record*: The following documents as set forth in Sec. 10168, Pattern 60 at IV (5) constitute the record in a formal settlement:

- The formal settlement stipulation
- The charge(s) and amended charge(s)
- The original/amended/consolidated complaint and notice of hearing and affidavits of service if the facts of service have not been set forth in the stipulation
- Regional Director orders withdrawing/dismissing allegations
- Affidavits of service of all necessary documents if the facts of service have not been set forth in the stipulation
- The answer, but only if the respondent insists and it has not been withdrawn. Preferably the answer should be withdrawn. Sec. 10164.4.
- The order of severance, if consolidated complaint had issued and severance occurred, and
- Any letter, document or affidavit disposing of the rights of other interested parties. Sec. 10134.3.

Hearing transcripts should not be incorporated as part of the record.

10166.4 Other Case Specific Issues

Case specific issues common in formal settlements are addressed below.

(a) *Nonadmission Clauses*: Nonadmission clauses may not be included if the stipulation does not provide for a court judgment. Secs. 10164.5 and 10168, Pattern 60 at IV(6). Nonadmission clauses should not be included in notices. Sec. 10130.8.

(b) *Scope of the Stipulation and Reservation of Evidence*: The stipulation should contain a clause stating that the stipulation does not constitute a settlement of any other cases or matters and should also contain a reservation of evidence clause. Sec. 10168, Pattern 60 at IV (7).

(c) *Consolidated C & R Cases*: In a consolidated C and R case, the stipulation should make provision for resolution of the R case. *Aero Corp.*, 237 NLRB 455 (1978).

(d) *Joint & Several Liability*: If joint and several respondents are parties and the apportionment of backpay is not equal, the apportionment should be specified. If one respondent is willing to settle but the other is not, the stipulation should provide that the signing respondent will bear only its proportionate share of the backpay liability unless efforts to obtain payment of the remaining portion from the other respondent should fail. Secs. 10130.5 and 10130.6.

(e) *Bargaining Order Cases*: When a bargaining order is provided for, a description of the bargaining unit and a statement that the union represents a majority of

the employees therein should be set forth. Secs. 10166.3(b), 10166.5(b) and 10168, Pattern 60 at V.

10166.5 Proposed Order Provisions

Certain specific issues relative to order provisions of formal settlement stipulations are addressed below.

(a) *Organization & Language*: The proposed order provisions of the stipulation should:

- Set forth the cease and desist provisions and thereafter the affirmative provisions of the proposed order. Sec. 10168, Pattern 60 at VI (1) and (2).
- In the affirmative provisions of the proposed order, follow the time deadlines established by the Board in *Indian Hills Care Center*, 321 NLRB 144 (1996). Sec. 10168, Pattern 60 at VI (2).
- Contain a 21-day sworn certification-of-compliance provision. Secs. 10168, Pattern 60 at VI 2(j) and 10170 at VI 2(g) and also see *Indian Hills Care Center*, supra.
- Provide for either narrow or broad order language, as appropriate. Sec. 10168, Pattern 60 at VI (1)(b).
- Use the proper language for respondent employers (“officers, agents, successors and assigns”) and respondent unions (“officers, agents and representatives”). Secs. 10168, Pattern 60 at VI and 10170 at VI.

(b) *Bargaining Order*: If the stipulation intends to impose a bargaining obligation, the proposed order as set forth in Sec. 10168, Pattern 60 at VI (2)(h) should provide for:

- Affirmative bargaining obligation language
- A requirement that any agreement reached be reduced to writing
- A description of the bargaining unit, and
- An accurate statement of the union’s full name.

If the unlawful refusal to bargain occurred during the certification year, the proposed order should provide for an extension of the certification year. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962). Sec. 10168, Pattern 60 at VI (2)(h).

(c) *Information Cases*: If the stipulation intends to require the respondent to provide information to the union, the proposed order should specify the precise information to be provided. The proposed order should require the respondent to provide

the union with the information that it requested without the necessity of making a new request. *I & F Corp.*, 322 NLRB 1037 fn. 1 (1997).

(d) *Unilateral Changes*: If the case involves an unlawful unilateral change, the proposed order should require the respondent to rescind the change and make the employees whole for their losses. However, to the extent that the unlawful unilateral change may have benefited unit employees, the proposed order should contain language to the effect that it shall not be construed as requiring or authorizing the respondent to rescind those benefits unless requested to do so by the union. See, e.g., *Wanex Electrical Services*, 338 NLRB No. 16, slip op. at 3, 4 (2002).

(e) *Minority Union*: In cases where the employer has unlawfully entered into a collective-bargaining agreement with a minority union, the proposed order should require the employer to cease giving effect to the contract but provide that nothing in the order “shall require the withdrawal or elimination of any wage increase or other benefits or terms and conditions of employment that may have been established pursuant to the performance of the contract.” *Alliant Foodservice*, 335 NLRB No. 57, slip op. at 3 (2001).

(f) *Backpay*: The proposed order should liquidate the backpay owed. Sec. 10164.6. The exact amount of backpay owed should be set forth in the proposed order and in the notice opposite each discriminatee’s name and the figure totaling the full amount of backpay owed should be set forth in the proposed order. Secs. 10164.6 and 10168, Pattern 60 at VI (2)(d).

Where offers of reinstatement/instatement are required, the stipulation should contain a provision that the respondent will make whole the discriminatees for any additional loss of earnings plus interest caused by its failure to offer reinstatement/instatement within 14 days of entry of the Board order. Secs. 10164.6 and 10168, Pattern 60 at VI (2)(e) and *Indian Hills Care Center*, 321 NLRB 144 (1996). If such a provision is used, the proposed order should require the production of backpay records. Secs. 10164.6 and 10168, Pattern 60 at VI (2)(g).

If the respondent is to provide records for the calculation of backpay, the proposed order should contain the standard Board language for record production (*Ferguson Electric Co., Inc.*, 335 NLRB No. 15 (2001) (“Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order”)). Sec. 10168, Pattern 60 at VI (2)(g).

If the interest owed by the respondent has not been calculated but interest is to be paid on backpay (*New Horizons for the Retarded*, 283 NLRB 1173 (1987)), or losses to benefit funds are to be paid (*Merryweather Optical Co.*, 240 NLRB 1213, 1217 fn. 7 (1979)), the method of computing those payments should be specified.

(g) *Installment Payments*: If the settlement provides for installment payments, the stipulation should state that upon approval by the Board it is effective nunc pro tunc to

the date of execution of the stipulation, or, in the alternative, it may provide for payments only after Board approval. Sec. 10168, Pattern 60 at VI (2)(e) and (f) and OM-98-67.

Security documents such as a personal guarantee, third party guarantee, assignment of contract proceeds, real property mortgage, real property deed of trust, surety bond and security agreement, when required, should be included as part of the settlement stipulation as attachments.

(h) Reinstatement/Expungement: Where offers of reinstatement/instatement are to be required, the name of each discriminatee entitled to reinstatement/instatement should be included in the proposed order and notice. Sec. 10168, Pattern 60 at VI (2)(b).

If the discriminatee is to be reinstated to a position different than his former position, that position should be specified. Sec. 10130.3.

In circumstances where the discriminatee has chosen to forgo reinstatement/instatement, the proposed order and notice should provide that the discriminatee does not desire reinstatement/instatement or that such an offer has been refused. Secs. 10130.4 and 10130.9.

The proposed order should provide for expungement of records and written confirmation of expungement in cases of unlawful discipline or discharge. Sec. 10168, Pattern 60 at VI (2)(c) and also see *Indian Hills Care Center*, 321 NLRB 144, 145 (1996) (“Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharge, and within 3 days thereafter notify the employees in writing that this has been done and that the discharges will not be used against them in any way.”).

(i) *Hiring Halls*: In circumstances where there is an exclusive hiring hall, the proposed order should provide that the discriminatees be given credit in the seniority formula for the number of hours of employment discriminatorily denied them. Sec. 10130.10.

(j) *Specific Orders*: For specific order provisions in CA cases consult Sec. 10168, and in CB, CC and CD cases consult Sec. 10170.

10166.6 Proposed Notice and Related Order Provisions

Certain specific issues relative to notices proposed in formal settlement stipulations are addressed below.

(a) *Notice Content*: The notice should:

- Be directed to the appropriate group and on the appropriate notice form (“Employees” or “Employees and Members”). Sec. 10132.2.
- Mirror the provisions of the proposed order
- Conform to those normally issued by the Board in contested cases
- Be written in clear layperson’s language, *Ishikawa Gasket America, Inc.*, 337 NLRB No. 29 (2001)
- Set forth a statement of rights under Section 7 of the Act, a statement describing the function of the Board and its processes, and the contact

information for the Regional Office and the Board website, *Ishikawa Gasket America, Inc.*, supra

- Set forth the appropriate language for statutory priority cases. Secs. 10202–10222.

(b) *Notice Posting/Mailing/Reading*: The proposed order should:

- Set forth any specific details concerning the posting/mailing/reading of the notice, such as any required translation; exact posting sites; method, verification and recipients of all mailing; any required newspaper publication; and any required notice reading and by whom. Sec. 10132.4.
- Provide that if respondent goes out of business or closes the involved facility, the notice should be mailed to employees employed by it at any time since the date of the first unfair labor practice. *Excel Container, Inc.*, 325 NLRB 17 (1997).
- If the settlement involves a charge against a union, require the union to submit signed copies of the notice to the Regional Director for forwarding to the employer for posting. Secs. 10132.4 and 10170 at VI (2)(f); *Electrical Workers Local 3 (M. F. Electrical Service Co.)*, 325 NLRB 527 (1998).
- Specify the time period for the notice posting, which should be for 60 days unless prior clearance has been obtained from the Division of Advice. Secs. 10132.1, 10168, Pattern 60 at VI (2)(i) and 10170 at VI (2)(e).

10166.7 Consent to Board Order

Within the formal settlement stipulation, the parties must consent to the entry of a Board order without further notice. The terms of the order must be specific and, since the Board must act in conformity with the formal settlement stipulation, the language should follow the substance of Board orders in comparable cases. It is permissible, when appropriate, to substitute “shall not” for “shall cease and desist from,” with corresponding grammatical changes.

10166.8 Consent to Court Judgment

The standard provision for the Consent to Court Judgment set forth at Sec. 10168, Pattern 60 at VII is self-explanatory and is applicable to all other types of unfair labor practice cases.

10168 Pattern 60, Formal Settlement Stipulation in CA Case

Although the specific content of a formal settlement stipulation will vary depending upon the circumstances present in a particular case, the following is a suggested pattern for use in formal settlements in CA cases:

ABC Company

Respondent

and

XYZ Union

Case

Charging Party

and

Mutual Benefit Society

Intervenor

FORMAL SETTLEMENT STIPULATION

I. INTRODUCTION

Through this formal settlement stipulation, the parties to this proceeding -- ABC Company (Respondent), XYZ Union (Charging Party), Mutual Benefit Society (Intervenor) and the General Counsel of the National Labor Relations Board -- agree that, upon approval of this stipulation by the Board, a Board Order in conformity with its terms will issue [and a court judgment enforcing the Order will be entered]. The parties also agree to the following:

II. JURISDICTION

- 1) Respondent is a Delaware corporation with its principal office in New York, New York. It operates a plant in Columbia, Alabama (the Columbia plant), where it is engaged in the manufacture, non-retail sale and distribution of furniture.**

- 2) In conducting its business operations at the Columbia plant during the one-year period ending June 30, 20_, Respondent purchased and received goods valued in excess of \$50,000 directly from outside the State of Alabama.**

- 3) Respondent is now, and has been at all material times, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.**

III. LABOR ORGANIZATION STATUS

The Charging Party and the Intervenor are labor organizations within the meaning of Section 2(5) of the Act.

IV. PROCEDURE

- 1) FILING AND RECEIPT OF CHARGE(S). On June 1, 20_, the Charging Party filed a charge in Case _____, which was served on Respondent on June 1, 20_. On June 8, 20_, the Charging Party filed an amended charge in Case _____, which was served on Respondent on June 8, 20_. On June 15, 20_, the Charging Party filed a second amended charge in Case _____, which was served on Respondent on June 15, 20_. Respondent acknowledges receipt of the charge, amended charge and second amended charge.**

- 2) **ISSUANCE OF COMPLAINT.** On ____ (date)_____, the **Regional Director for Region ____ of the Board issued a Complaint and Notice of Hearing in Case _____, alleging that Respondent violated the National Labor Relations Act. Respondent, the Intervenor and the Charging Party each acknowledge receipt of a copy of the Complaint and Notice of Hearing, which was served by certified mail on June 18, 20__.**

[Note: Where an answer to the complaint(s) has been filed, an additional numbered paragraph with the following language should be used to withdraw the answer. Sec. 10164.4.] **By entering into this stipulation, the parties agree that the Answer to the Complaint filed by Respondent on or about _____ is withdrawn.**

- 3) **WAIVER.** All parties waive the following: (a) filing of answer; (b) hearing; (c) administrative law judge's decisions; (d) filing of exceptions and briefs; (e) oral argument before the Board; (f) the making of findings of fact and conclusions of law by the Board; and (g) all other proceedings to which the parties may be entitled under the Act or the Board's Rules and Regulations.
- 4) **ADMISSION.** [Note: This paragraph is necessary where there is no provision for entry of a court judgment. Sec. 10164.5.] **Respondent admits the allegations contained in paragraphs ____ of the complaint.**
- 5) **THE RECORD.** The entire record in this matter consists of the following documents: this stipulation; the charge; amended charge; second amended charge; and Complaint and Notice of Hearing. Copies of the charge, amended charge, second amended charge and Complaint and Notice of Hearing are attached as Exhibits ____ through _____. [Note: Affidavits of service of the charge, amended charge, second amended charge and complaint and notice of hearing should be included if the service of these documents and their receipt by the parties have not been set forth in the stipulation. The answer should be included, if respondent or intervenor insists. See Sec. 10166.3(c)].
- 6) **ENTIRE AGREEMENT.** This stipulation constitutes the entire agreement between the parties and there is no

agreement of any kind, verbal or otherwise, that alters or adds to it. [The following may be added only in stipulations providing for court judgment. Sec. 10130.8. **It is understood that the signing of this stipulation by Respondent does not constitute an admission that it has violated the Act.**]

- 7) **SCOPE OF THE STIPULATION AND RESERVATION OF EVIDENCE.** This stipulation settles only the allegations in the above-captioned case(s) and does not constitute a settlement of any other cases or matters. It does not preclude persons from filing charges, the General Counsel from prosecuting complaints or the Board and the courts from finding violations with respect to matters which precede the date of the approval of this stipulation, regardless of whether those matters are known to the General Counsel or are readily discoverable. The General Counsel reserves the right to use the evidence obtained in the investigation and prosecution of the above-captioned case(s) for any relevant purpose in the litigation of this or any other cases, and a judge, the Board and the courts may make findings of fact and/or conclusions of law with respect to that evidence.
- 8) **EFFECTIVE DATE.** This stipulation is subject to the approval of the Board and it does not become effective until the Board has approved it. The Regional Director [or General Counsel in the case of unilateral settlements] will file with the Board this stipulation and the documents constituting the record as described above. Once the Board has approved the stipulation, Respondent will immediately comply with the provisions of the order as set forth below.

V. FACTS

[When appropriate. Sec. 10166.6. If a bargaining order is required, set forth a description of the appropriate bargaining unit and the labor organization's majority status in that unit.]

VI. ORDER

Based on this stipulation and the record as described above, and without any further notice of proceedings, the Board may immediately enter an order providing as follows:

Respondent, ABC Company, its officers, agents, successors and assigns, shall:

1. Cease and desist from:

[8(a)(1)]

(a) [NOTE: Insert language covering specific 8(a)(1) violations alleged in complaint; likewise, the notice should be patterned after the provisions of the order.]

(b) In any other [or “like or related”] manner interfering with, restraining or coercing its employees in the exercise of their right to self organization, to form labor organizations, to join or assist XYZ Union or any other labor organization, to bargain collectively through representatives of their own choosing and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities.

[8(a)(2)]

(c) Dominating or interfering with the administration of Mutual Benefit Society, or dominating or interfering with the formation or administration of any other labor organization of its employees, or from contributing financial or other support to Mutual Benefit Society or to any other labor organization of its employees.

[8(a)(2)]

(d) Recognizing Mutual Benefit Society as the representative of any of its employees for the purposes of dealing with Respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment or other terms and conditions of employment.

[NOTE: If the case involves assistance only and not domination, the following paragraph should be substituted for subparagraph (c) above:]

“Contributing financial or other support to Mutual Benefit Society or to any other labor organization of its employees.”

[and the following language should be added to subparagraph (d):]

“unless and until that organization has been certified by the National Labor Relations Board as the exclusive representative of those employees.”]

[NOTE: If the case involves a collective-bargaining agreement between Respondent and the assisted or dominated organization, an additional provision should be added to the order, if it is appropriate, to set aside the contract. See, e.g., *Farmer’s Energy Corp.*, 266 NLRB 722 (1983); *International Metal Products Co.*, 104 NLRB 1076 (1953).]

[8(a)(3)]

(e) Discharging or refusing to reinstate any of its employees or in any other manner discriminating in regard to hire or tenure of employment or any other term or condition of employment, in order to discourage membership in XYZ Union or in any other labor organization.

[8(a)(5)]

(f) Refusing to bargain collectively with XYZ Union as the exclusive representative of all its employees at the Columbia, Alabama plant, excluding office clerical employees, guards, professional employees and supervisors as defined in the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

[8(a)(2)]

(a) Withdraw all recognition from Mutual Benefit Society as representative of any of its employees for the purpose of dealing with the Respondent with respect to grievances, labor disputes, wages, rates of pay, hours of employment and other conditions of employment, and completely disestablish Mutual Benefit Society as such representative.

[NOTE: If the case involves assistance only and not domination, the language “and completely disestablish Mutual Benefit Society as such representative” should be omitted and in its place should be added the language “unless and until the organization has been certified by the National Labor Relations Board as such representative.”]

[8(a)(3)]

(b) Within 14 days from the date of the Board’s Order, offer [names of employees] full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

[If the agreement between the parties reflects a date certain for the reinstatement of employees, this paragraph should be amended accordingly.]

(c) Within 14 days of the Board's Order, remove from Respondent's files any reference to the discharge of [name of employees] and within 3 days thereafter, notify those employees, in writing, that this was done and that the discharges will not be used against them in any way.

(d) Make whole the following employees for any loss of pay they may have suffered by reason of the [alleged] discrimination against them, by payment to them of the amounts set opposite their respective names:

J. Smith	\$1,350.00
M. Brown	2,125.00
S. Cohen	<u>1,525.00</u>
	\$5,000.00

(e) Make whole the above-named employees for any additional loss of pay caused by Respondent's failure, if any, to reinstate them in accordance with the provisions of this Order, within 14 days from the date of this Order, by payment to them of the respective amounts that they would have earned if properly reinstated, from the 15th day after the date of this Order to the date of a proper offer of reinstatement, less their net earnings during such period, said amounts to be computed on a quarterly basis.

[NOTE: The language in (e) need only be used where the reinstatement is to follow the issuance of the Board's Order Approving the stipulation. It should be modified accordingly if the parties' agreement contains a date certain for reinstatement.]

[NOTE: Installment payments - when a formal settlement stipulation provides for installment payments, the Regional Office should add the following sentence: "This

stipulation is subject to the approval of the Board and, immediately upon approval by the Board, it will be retroactively effective to the date of execution of the stipulation.” Alternatively, the Regional Office can make the first installment payment due 30 days (or some other specific time period) after the Board’s approval of the stipulation, with subsequent payments due every 30 days (or some other specific time period) thereafter. See also Sec. 10603 of the Compliance Manual and Appendices 9 and 10 regarding Security Agreements and default language.]

(f) Make whole the following employees for loss of pay suffered by reason of the discrimination against them, by payment to them of the amounts set forth opposite their respective names and at the times set forth in the schedule that follows. [If any installment is not paid on or before the date due, the full unpaid amount shall become immediately due and payable and the Board may, without further notice, institute proceedings against the Respondent for the collection of the full indebtedness remaining due, with additional interest due on the entire unpaid balance from the date of default until full payment is received, computed in accordance with the formula set forth in *New Horizons for the Retarded, Inc.*, 283 NLRB 1173 (1987).]

SCHEDULE

Names of Employees	Amt. Due and Date of Payment			Total
	8/1/20	9/1/20	10/1/20	
J. Smith	\$500.00	\$500.00	\$350.00	\$1,350.00
M. Brown	900.00	900.00	325.00	2,125.00
<u>S. Cohen</u>	<u>600.00</u>	<u>600.00</u>	<u>325.00</u>	<u>1,525.00</u>
Total	\$2,000.00	\$2,000.00	\$1,000.00	\$5,000.00

(g) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good

cause, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

[NOTE: This provision is unnecessary if the stipulation contains an agreed-upon amount of backpay.]

[8(a)(5)]

(h) Upon request, bargain collectively with XYZ Union as the exclusive representative of all its employees at its Columbia, Alabama plant, excluding office clerical employees, guards, professional employees and supervisors, as defined in the Act, with respect to rates of pay, wages, hours of employment and other conditions of employment, and if an understanding is reached, reduce it to writing and sign it.

[NOTE: When a refusal to bargain occurs during the certification year, the certification year should be extended to compensate for that period of time during which good-faith collective bargaining did not occur due to respondent's unlawful refusal to bargain. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962). In cases involving refusals to bargain during the certification year, the bargaining order should conform to this provision and specifically extend the certification year for the appropriate period of time. *Van Dorn Plastic Machinery Co.*, 300 NLRB 278 (1990); *General Electric Co.*, 163 NLRB 198 (1967). For example, a Board order may read as follows:

On request, bargain with the Union as the exclusive representative of the employees in the Unit and if an understanding is reached, reduce it to writing and sign it. On resumption of bargaining, the Union's status as the exclusive collective-bargaining representative of the Unit shall be extended for ___ months thereafter, as if the initial year of the certification has not expired.]

[NOTE: In cases when there has been no bargaining during the certification year, the word "commencement" should be substituted for "resumption."]

[ALL CASES]

(i) Within 14 days of service by the Region, post at its Columbia, Alabama plant copies of the attached notice marked “Appendix A.” [Attach to the stipulation a copy of the Notice to Employees and mark it “Appendix A.” For guidance regarding notice language, see Sec. 10132.3.] **Copies of the notice, on forms provided by Region __, after being signed by Respondent’s authorized representative, shall be posted by Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Respondent will take reasonable steps to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, Respondent has gone out of business or closed the facility involved in these proceedings, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by Respondent at any time since [date of the first unfair labor practice].**

[NOTE: In all CA and CB cases, where the company and union as corespondents have entered into a joint settlement agreement, the settlement should provide for posting by respondent/company of the notice signed by the union respondent by inserting an additional paragraph after (i) as follows:

Post at the same places and under the same conditions, as set forth above, copies of the attached notice to employees marked “Appendix B” [Union - Notice to Employees and Members] as soon as they are provided to Respondent by Region [__.]

(j) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent has taken to comply.

[NOTE: If the stipulation contains no provision for a consent judgment, there must be an admission of the allegations of the complaint or a stipulation of facts showing the commission of unfair labor practices (see par. IV,4). Such an admission or stipulation is essential to enforcement of the Board order in the Court of Appeals in the event of respondent's failure to comply. Sec. 10164.5.]

VII. ENFORCEMENT OF ORDER

The United States Court of Appeals for any appropriate circuit may, on application by the Board, enter its judgment enforcing the Order of the Board in the form set forth above. Respondent waives all defenses to the entry of the judgment, including compliance with the order of the Board and its right to receive notice of the filing of an application for the entry of such judgment, provided that the judgment is in the words [and figures] set forth above. However, Respondent shall be required to comply with the affirmative provisions of the Board's Order after entry of the judgment only to the extent that it has not already done so.

ABC Company

Respondent

By

Joe B. Smith, President

[address]

Date

XYZ Union

Charging Party

By

Sam Brown, International Representative

[address]

Date

Mutual Benefit Society

Intervenor

By

President

[address]

Date

Approval recommended:

Date

Attorney, Region _____

National Labor Relations Board

[address]

Approved:

Office of the General Counsel

National Labor Relations Board

Washington, D.C. 20570

[or] Regional Director,

Region ____

[address]

Date

10170 PATTERN FOR SETTLEMENT STIPULATION IN CB, CC, CD, AND CE CASES

[NOTE: As set forth above in Sec. 10164.7, unilateral formal settlements are approved by the General Counsel and bilateral formal settlements are approved by the Regional Director.]

10170 Pattern for Settlement Stipulation in CB, CC, CD, and CE Cases

The above pattern for settlement stipulations in CA cases is generally also applicable to CB, CC, CD, CE, CG, and CP cases. The principal differences of substance between the CA stipulation pattern and the stipulation in other cases is in the Board order set forth in paragraph “VI. Order,” of Pattern 60 (Sec. 10168) and in the attached notice to employees. For this reason, the entire stipulation form is not being incorporated here. However, the following drafts of cease and desist and affirmative provisions for frequently encountered CB, CC, CD, and CE circumstances are set forth below. (Since CG and CP charges are rare, no specific examples are provided; however, Regional Offices should tailor language to fit the particular circumstances.)

[NOTE: The following patterns utilize the basic statutory language. The specific provisions of a formal settlement should conform to the allegations in the complaint.]

VI. ORDER

Based on this stipulation and the record as described above, and without any further notice of proceedings, the Board may immediately enter an order providing as follows:

Respondent, XYZ Union, its officers, agents and representatives, shall:

1. Cease and desist from:

[8(b)(1)(A)]

(a) Restraining or coercing employees of ABC Company [or any other employer] in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act, as amended, by _____.

[8(b)(1)(B)]

(b) Restraining or coercing ABC Company [or any other employer] in the selection of its representatives for the purposes of collective bargaining or the adjustment of grievances, by _____.

[8(b)(2)]

(c) Causing or attempting to cause ABC Company [or any other employer] to discriminate against any employees in regard to their hire or tenure of employment, or any term or condition of employment, in violation of Section 8(a)(3) of the Act, as amended, by _____.

[8(b)(2) or (3)]

(d) Giving effect to paragraph(s) _____ of its contract with ABC Company.

[8(b)(3)]

(e) Refusing to bargain collectively with ABC Company on behalf of all employees of its Columbia, Alabama plant, excluding office clerical employees and guards, professional employees and supervisors as defined in the Act.

[8(b)(4)(i) and (ii)(A)—Conduct Compelling Union Membership]

(f) Engaging in, or inducing or encouraging any individual employed by ABC Company, or any other person engaged in commerce or in an industry affecting commerce, to

engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform any services or threatening, coercing, or restraining the ABC Company, or any other person engaged in commerce or in an industry affecting commerce, where, in either case, an object thereof is forcing or requiring ABC Company to join [Charged Union] or any other labor organization.

[8(b)(4)(i) and (ii)(A)—Conduct Compelling Membership in Employer Organization]

(g) Engaging in, or inducing or encouraging any individual employed by ABC Company, or any other person engaged in commerce or in an industry affecting commerce, to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform any services or threatening, coercing, or restraining the ABC Company, or any other person engaged in commerce or in an industry affecting commerce, where, in either case, an object thereof is forcing or requiring ABC Company to join [Employer Organization] or any other employer organization.

[8(b)(4)(i) and (ii)(A)—Conduct Seeking an 8(e) Agreement]

(h) Engaging in, or inducing or encouraging any individual employed by ABC Company, or any other person engaged in commerce or in an industry affecting commerce, to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform any services, or threatening, coercing, or restraining ABC Company, or any other person engaged in commerce or in an industry affecting commerce, where, in either case, an object thereof is forcing

or requiring ABC Company to enter into, maintain, give effect to, or enforce an agreement whereby ABC Company agrees to cease doing business with any other person.

[8(e)—Hot Cargo Agreement]

(i) Maintaining, giving effect to, or enforcing its agreement with [Union or Employer], entered into on [Date], insofar as it provides: [Set Forth Clause]; or to any extension, renewal, modification, or supplement thereof, or to enter into any other agreement with [Employer or Union], or any other [labor organization or employer as appropriate], whereby the signatory employer cease(s) or refrain(s) or agree(s) to cease or refrain from handling, using, selling, transporting, or otherwise dealing in any of the products of any employer, or to cease doing business with any other person.

[8(b)(4)(i) and (ii)(B)—Secondary Conduct with Cease Doing Business Objective]

(j) Engaging in, or inducing or encouraging any individual employed by D Company, or any other person engaged in commerce or in an industry affecting commerce, to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform any services, or threatening, coercing, or restraining D Company, or any other person engaged in commerce or in an industry affecting commerce, where, in either case, an object thereof is to force or require D Company, or any other person, to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with ABC Company or any other person.

[8(b)(4)(i) and (ii)(B)—Secondary Conduct with Recognitional Objective]

(k) Engaging in, or inducing or encouraging any individual employed by D Company, or any other person engaged in commerce or in an industry affecting commerce except ABC Company, to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials or commodities, or threatening, coercing, or restraining D Company, or any other person engaged in commerce or in an industry affecting commerce, where, in either case, an object thereof is forcing or requiring ABC Company to recognize or bargain with XYZ Union, or any other labor organization, as representative of any of the employees of ABC Company, unless and until such labor organization has been certified by the National Labor Relations Board as the representative of such employees.

[8(b)(4)(i) and (ii)(C)—Primary Conduct With Recognitional Objective Where Another Union Certified]

(l) Engaging in, or inducing or encouraging any individual employed by ABC Company, or by any other person engaged in commerce or in an industry affecting commerce, to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform any services, or threatening, coercing, or restraining ABC Company, or any other person engaged in commerce or in an industry affecting commerce, where, in either case, an object thereof is forcing or requiring ABC Company to recognize or bargain with XYZ Union, or any other labor organization, as the representative of any employees of ABC Company in a bargaining unit covered by a certification issued on [Date], in Case [Number] to an organization other than XYZ Union.

[8(b)(4)(i) and (ii)(D)—Jurisdictional Disputes]

(m) Engaging in, or inducing or encouraging any individual employed by ABC Company, or by any other person engaged in commerce or in an industry affecting commerce, to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform any services, or threatening, coercing, or restraining ABC Company, or any other person engaged in commerce or in an industry affecting commerce, where, in either case, an object thereof is forcing or requiring ABC Company to assign the work of [Describe the Work in Dispute] to employees who are members of, or represented by XYZ Union rather than to employees who are not members of, or represented by, XYZ Union.

[8(b)(5)—Excessive Fees]

(n) Requiring of employees covered by an agreement authorized under Section 8(a)(3) of the Act, as modified by the Labor-Management Reporting and Disclosure Act of 1959, the payment as a condition precedent to becoming members of XYZ Union of a fee in an amount that is excessive or discriminatory.

[8(b)(6)—Featherbedding]

(o) Causing or attempting to cause ABC Company to pay or deliver, or to agree to pay or deliver, any money or other thing of value in the nature of an exaction for services that are not performed or not to be performed.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

[8(b)(2)]

(a) Notify ABC Company, in writing, that it has withdrawn its objections to the said Company's employment of Joe Doaks and now requests the Company to reinstate Joe Doaks. Notify Joe Doaks, in writing, that it has so informed ABC Company.

(b) Make whole Joe Doaks for any loss of pay suffered by reason of the [alleged] discrimination against him by payment to him of the amount of \$_____.

(c) Make whole Joe Doaks for any additional loss of pay caused by the failure of the Respondent, within 14 days from the date of this Order, (1) to notify ABC Company in writing that it has withdrawn its objections to said Company's employment of the said Joe Doaks and requests the Company to reinstate him or (2) to notify Joe Doaks, in writing, that it has so informed ABC Company; by payment to the said Joe Doaks of the amount that he would have earned if reinstated by ABC Company, from the 15th day after the date of this Order to the date of the giving of the said notices by the Respondent to ABC Company and to the said Joe Doaks, less his net earnings during such period, said amounts to be computed on a quarterly basis.

[NOTE: If the Union has withdrawn its objection and/or the discriminatee has been reinstated or paid, the language should be modified accordingly. In addition, the language should also be modified to reflect the Union's continuing backpay obligation if it is anticipated the Employer will not reinstate the discriminatee upon the Union's request.]

[8(b)(3)]

(d) Bargain collectively, upon request, with ABC Company in regard to rates of pay, wages, hours of employment or other terms and conditions of employment of all employees at the Columbia, Alabama plant of said Company, excluding office clerical employees, guards, professional employees and supervisors, as defined in the Act.

[ALL CASES]

(e) Within 14 days of service by the Region, post at its business office in Columbia, Alabama copies of the attached notice marked "Appendix A." Copies of the notice, on forms provided by the Regional Director for Region __, after being signed by Respondent's representative, shall be posted by Respondent immediately upon receipt and be maintained for 60 consecutive days in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent to ensure that such notices are not altered, defaced or covered by any other material.

(f) Mail to the Regional Director for Region __ signed copies of the said notice for posting, if ABC Company is willing, in the plant of ABC Company at Columbia, Alabama, in the places where notices to employees are customarily posted. Copies of said notice, on forms provided by Regional Director for Region __, after having been signed by Respondent's representative, shall be forthwith returned to the Regional Director for such posting by ABC Company.

[NOTE: In all CA and CB cases, where the company and union as co-respondents have entered into a joint settlement agreement, delete the words “if ABC Company is willing,” in par. (f), above.]

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent has taken to comply.